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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MCCARTHY BUILDING COMPANIES, )  
INC., a Missouri corporation, successor to )  
SDL CORPORATION, a Washington )  
corporation, )  
Plaintiff, ) No.  
v. ) NOTICE OF REMOVAL OF ACTION  
THE OHIO CASUALTY INSURANCE ) UNDER 28 U.S.C. § 1441(a)  
COMPANY, an Ohio corporation; LIBERTY ) (DIVERSITY)  
SURPLUS INSURANCE CORPORATION, a )  
New Hampshire corporation, )  
Defendants, )  
and )  
ARCH INSURANCE COMPANY, a Missouri )  
corporation; ST. PAUL FIRE AND MARINE )  
INSURANCE COMPANY, a Minnesota )  
corporation, )  
Additional Parties. )

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Defendants THE OHIO CASUALTY INSURANCE COMPANY and LIBERTY SURPLUS INSURANCE CORPORATION (“Removing Defendants”), hereby give notice of their removal of the above-captioned action, Case No. 10-2-14433-1 SEA, currently pending in the Superior Court of King County, Washington, to the United States District Court for the

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1 Western District of Washington at Seattle pursuant to 28 U.S.C. § 1441, and in support  
2 thereof state as follows:

3 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and  
4 28 U.S.C. § 1441.

5 2. This is a civil action for, among other things, breach of insurance contract, bad  
6 faith, and violation of Washington's Insurance Fair Claims Act, RCW 48.30.015 ("IFCA").  
7 Plaintiff filed its Complaint in this matter in the Superior Court of Washington for King  
8 County on or about April 19, 2010 (King County Cause No. 10-2-14433-1 SEA). A copy of  
9 the Complaint, the Order Setting Civil Case Schedule, and Efilng Receipt, which constitutes  
10 the process pleadings received by Liberty Surplus Insurance Company ("Liberty"), are  
11 attached hereto as Exhibit A. A copy of the Summons to Liberty as received from the King  
12 County Superior Court is attached hereto as Exhibit B.

13 3. Defendants The Ohio Casualty Insurance Company ("Ohio Casualty") and  
14 Liberty first received copies of the Complaint on April 19, 2010 when courtesy copies of the  
15 Complaint, Order Setting Civil Case Schedule, and Efilng Receipt were provided to counsel  
16 for both Defendants via electronic mail. Upon information and belief, Additional Parties,  
17 Arch Insurance Company ("Arch") and St. Paul Fire and Marine Insurance Company ("St.  
18 Paul") were provided with courtesy copies of the Complaint, Order Setting Case Schedule,  
19 and Efilng Receipt via electronic mail on that same date.

20 4. The King County Superior Court Docket shows a Declaration of Service,  
21 stating that a copies of the Summons, Complaint, King County Case Schedule, and discovery  
22 requests were mailed to the Washington State Insurance Commissioner on April 22, 2010 for  
23 service on the Defendants and the Additional Parties. The King County Superior Court  
24 Docket for this matter is attached hereto as Exhibit C. Upon information and belief, the  
25 Washington State Insurance Commissioner received these documents on or about April 26,  
26 2010.

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1       5. Upon information and belief, Plaintiff McCarthy, a Missouri Corporation, is,  
 2 and at all relevant times has been, a citizen of and has its principal place of business in the  
 3 State of Missouri. Upon information and belief, Plaintiff's predecessor in interest, SDL  
 4 Corporation, was a citizen of and had its principal place of business in the State of  
 5 Washington.

6       6. Defendant Ohio Casualty is an Ohio corporation and has its principal place of  
 7 business in Ohio. Defendant Liberty is a New Hampshire corporation and has its principal  
 8 place of business in Massachusetts. Thus, both named Defendants are citizens of and have  
 9 principal places of business in states other than Washington and Missouri and the requisite  
 10 diversity of citizenship exists under 28 U.S.C. § 1332.

11       7. Upon information and belief, Additional Party, Arch is a Missouri corporation  
 12 and has its principal place of business in New York. Upon information and belief, Additional  
 13 Party, St. Paul is a Minnesota corporation and has its principal place of business in Minnesota.

14       8. Plaintiff's Complaint does not list a cause of action against either Arch or  
 15 St. Paul, but merely names Arch and St. Paul as Additional Parties.

16       9. Because Plaintiff's Complaint does not state any real and substantial  
 17 controversy between McCarthy and Additional Parties, Arch or St. Paul, Arch and St. Paul are  
 18 either nominal or fraudulently joined parties. See Navarro Savings Ass'n v. Lee, 446 U.S.  
 19 458, 461 (1980) ("[A] federal court must disregard nominal or formal parties and rest  
 20 jurisdiction only upon the citizenship of real parties to the controversy."); Strotek Corp. v. Air  
Transp. Assoc. of Am., 300 F.3d 1129, 1133 (9th Cir. 2002) ("Defendants who are nominal  
 22 parties with nothing at stake may be disregarded in determining diversity, despite the  
 23 propriety of the technical joinder.") (citations omitted); United Computer Sys., Inc. v. AT&T  
Corp., 298 F.3d 756 (9th Cir. 2002) ("If a plaintiff fails to state a cause of action against a  
 25 resident defendant, and the failure is obvious according to the well-settled rules of the state,  
 26 the joinder is fraudulent and 'the defendant's presence in the lawsuit is ignored for purposes

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1 of determining diversity.'") (citing Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th  
 2 Cir. 2001); McCabe v. Gen. Foods. Corp., 811 F.2d 1336, 1339 (9th Cir. 1987)).

3       10. Although the prayer in Plaintiff's Complaint does not specify the dollar  
 4 amount of damages Plaintiffs seek in this matter, Plaintiff requests reimbursement of at least  
 5 \$250,000. Removing Defendants believe Plaintiff is seeking damages in excess of the  
 6 jurisdictional amount of \$75,000.00 based upon its knowledge of the costs of defense,  
 7 McCarthy's request for reimbursement of the \$250,000, and the nature of Plaintiff's  
 8 allegations.

9       11. This matter is a civil action over which this Court has original jurisdiction  
 10 under the provisions of 28 U.S.C. § 1332. It is one that may be removed to this Court by  
 11 Removing Defendants pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil  
 12 action wherein the amount in controversy exceeds the sum of \$75,000.00, exclusive of  
 13 interest and costs, and the real and substantial controversy is between citizens of different  
 14 states.

15       12. Defendant Ohio Casualty has entered an appearance in this matter. Ohio  
 16 Casualty's representative has informed the undersigned counsel that it joins in this removal.

17       13. Additional Party St. Paul has entered an appearance in this matter. This  
 18 Party's representative has informed the undersigned counsel that it does not object to and  
 19 joins in this removal. Additional Party Arch has not yet entered an appearance in this matter.

20       14. It is not necessary for either St. Paul or Arch, as nominal parties, to join in this  
 21 removal action. The "rule of unanimity" under 28 USC § 1446(a) does not apply to "nominal,  
 22 unknown or fraudulently joined parties." United Computer, 298 F.3d at 762 (emphasis  
 23 removed) (citing Emrich v. Touche Ross & Co., 846 F.2d 1190, 1193 n.1 (9th Cir. 1998)).  
 24 Thus, as a nominal or fraudulently joined party, neither Arch nor St. Paul need to consent to  
 25 this removal action.

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15. A notice of Removal will be filed with the Clerk of the Superior Court of King County in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, Removing Defendants pray that the above-entitled action now pending against them in the Superior Court of Washington for King County be removed to the United States District Court for the Western District of Washington at Seattle.

DATED this 14th day of May, 2010

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## THORSRUD CANE & PAULICH

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